

Memorandum of Opposition

Date: April 05, 2024

To: Honorable Members of the Committee On Judiciary

From: Jonathan Martell

RE: LD-2283 An Act to Enact the Crisis Intervention Order Act to Protect the Safety of the Public

Members of the Committee on Judiciary,

I would like to express my Opposition of LD-2283 An Act to Enact the Crisis Intervention Order Act to Protect the Safety of the Public

My Name is Jonathan Martell, from Sanford.

I am a current Sanford City Councilor, Lifetime member of the Gun Owners of Maine, Legislative Officer for the Sanford Springvale Fish and Game Club, NRA Range Safety Officer, and lifelong firearms enthusiast.

I see this bill as a knee jerk reaction to "Do Something" with what happened in Lewiston last year. I'll restate that current yellow flag laws in place should have prevented that tragedy. That combined with gun free zones due to posted liquor establishments prevented patrons from defending themselves without being in violation of the law. Passing another law that goes unenforced will not help victims, and only hurt the rest of the citizens.

I've seen abuse of these kinds of laws where firearms were removed based on hearsay simply to disarm the person so they could be easier to attack physically. This happened over and over again without any additional action from the court. The bar is set intentionally low with little regard for the person that it affects all in the name of safety for the petitioner. Many times the petitioner is not a victim, but in fact the abuser.

This bill seeks to expand Maine's current Yellow Flag law to a Red Flag "Crisis intervention order". These laws strip citizens of their Second Amendment rights without due process based on weak and nebulous standards. If passed, this Red Flag law could strip Mainers of their Constitutional rights without a constitutionally based hearing and based on hearsay for up to 14 days, without their knowledge.

Petition Process:

The petition standards do not have any firm requirements with language that it "May" include some burden of proof for self harm, fear of harm for another person, or actions or inaction that present a danger to a person in their care.

The word "may" indicates that these are optional, not that they must be met. I understand that this is last minute and rushed legislation, but should not the proper care and review be made here?

Reasonable fear is not defined and will vary from person or location. Some have uncontrollable fear from just seeing a firearm.

A danger to persons in their care is also vague and could be almost any situation.

Driving a child in a car is dangerous, yet we are not discussing removing cars from parents for arbitrary reasons.

A respondent must rely on their own paid law defense or a court appointed lawyer. It is well known that court appointed lawyers are not effective at their job. So much so that they are the brunt of jokes in media.

The period can be up to a year, which seems arbitrary for something this serious.

The language is inconsistent between firearm or firearms.

Only one additional hearing specifically called out in this proposed law. If the point is to serve justice, then shouldn't the standard appeals process apply?

This law does make false statements a crime, but how often does that get enforced? I've seen someone almost go bankrupt having to defend themselves from repeated false statements to the court.

Contracting with public or private agencies to assist petitioners for red flag orders is only providing a financial incentive for these organizations to file unnecessary claims.

Ex Parte:

The Ex Parte hearings are particularly egregious with no notice to the respondent. This is blatantly unconstitutional as the person has no idea that this is even happening. They are also not afforded any opportunity to defend themselves at the hearing with or without representation. This even allows for a simple phone call to substitute as an affidavit to the court.

How many of these so called emergency hearings would result in denials? Courts almost always will err on the side of caution to remove firearms, and many are politically motivated to do so as well.

Please note that the requirement for a medical evaluation is not included. There is no requirement for a medical evaluation or medical evidence. This is to allow for activist judges to freely disarm citizens without due process. This should not be based solely on the whim of a district judge that often times has political agendas.

The preponderance of evidence means that the party bearing the burden of proof must convince the judge that their version of events is more likely to be accurate than not. In simpler terms, there should be a greater than 50% chance that their claim is true. This is a much lower standard than beyond a reasonable doubt. As discussed in previous Red Flag laws, these are used as tools by abusers to disarm their victims, many of them women. I have seen this abuse of the justice system many times.

Termination:

The termination process only allows for one hearing, how is justice served when such limitations are placed? Also, the burden of proof is on the respondent. A negative is difficult to prove, nor should the accused be required to prove innocence. You can't disprove hearsay, which is being allowed under this bill. Any oral findings should be under oath, but are not required.

Renewal:

The renewal process appears to be unlimited. This should require a more stringent review for any renewals.

Storage:

There are no safe storage requirements for firearms stored by police departments or firearms dealers, and they are specifically given immunity from damage in this bill. There are numerous instances of improper storage where the owner receives their firearms back completely unusable at a significant financial loss to the owners. This has been a concern for multiple other similar bills, and has not been appropriately addressed.

The return of the firearms is prohibited if the firearms may be used as evidence in a criminal matter. This could cover any firearm as it is not well defined.

Appeals:

The Appeals process may only go to the Maine Supreme Court. "Without delay" is not well defined, and there is no default termination if the court does not hear the case within a certain timeframe.

Post Implementation Study:

The only reason for the study after passage is that the author and supporters of this bill understand that this will be problematic. The work should be done up front before submitting legislation that is ripe for abuse.

There are other laws in place that cover threats or assault while still protecting the right of due process.

I urge you to vote against this bill. Don't violate your oath of office, vote Ought Not to Pass on LD-2283

Sincerely,

Jonathan Martell
Sanford, ME